Agenda Item 3b. Challenges faced by young and small competition agencies in the design of merger control

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Challenges in Developing a Merger Regulatory Regime in Young Agencies

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"A Kenyan economy with globally efficient markets and enhanced consumer welfare for shared Prosperity"
Competition Authority of Kenya commenced operations on 1st August, 2011

- Mandate includes Regulation of Market structure (Merger regime); regulation of market conduct (Unilateral and Concerted practices)
- Suspensory merger regulatory regime

- All mergers (horizontal, vertical and conglomerate)

- A total of 510 mergers handled for the past 5 years (average of 100 per year)
A. Developing an optimal legal Framework

- Horizontal? Vertical? Conglomerate? Or all forms of mergers?
- Non-suspensory or suspensory regime?
- Thresholds or no thresholds regime?
- Setting timelines for finalization of mergers applications or not?
- Criteria= public interest and competition assessment; balancing the two
Challenges cont’d

B. Balancing different national economic policies goals. Industrial policy (Tarlochan and Pan Paper merger); employment policy (Britam and Real Insurance Merger); Investment policy versus the Competition policy

C. Resources
- Inadequate Human capital and skills;
- Budget constraints
Challenges cont’d

D. Information asymmetry
   Credibility of the data/information
   Accessibility of the data

E. Informal Sector
   The large informal sector and the competitive pressure on formal business
   Difficult in defining markets/market shares
   (Buzeki and Brookside mergers)
Conclusion

Young Agencies may learn from: –

- The Developed Agencies
- ICN programmes
- Enhanced cooperation